

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 10, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP650

Cir. Ct. No. 1997CF975033A

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK CHRISTOPHER TOLLIVER,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JOSEPH R. WALL, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Mark Christopher Tolliver pled guilty in January 1998 to one count of delivery of a controlled substance, cocaine, second or subsequent offense, as party to a crime. See WIS. STAT. §§ 961.16(2)(b)1.,

961.41(1)(cm)1., 961.48, and 939.05 (1997-98).¹ Tolliver filed *pro se* motions for sentence modification in 1998 and 1999, which the circuit court denied. He appeals, *pro se*, from orders denying his third postconviction motion and motion for reconsideration. The circuit court correctly concluded that his motions are procedurally barred and we affirm.

¶2 In this postconviction proceeding to withdraw his plea, Tolliver contends that his trial attorney was ineffective during the plea proceedings in two ways: (1) by failing to explain the elements of the offense; and (2) by failing to inform him of the trial court’s obligation to ensure his understanding of the offense and the elements pursuant to WIS. STAT. § 971.08. Tolliver failed to raise these claims in either his 1998 or his 1999 postconviction motion to modify sentence.

¶3 A defendant is barred from pursuing claims in a subsequent appeal that could have been raised in an earlier postconviction motion or direct appeal unless the defendant provides a “sufficient reason” for not raising them previously. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181–82, 517 N.W.2d 157, 162 (1994). In this court, Tolliver offers no reason for failing to raise his current claims in earlier proceedings. He therefore fails to meet his obligation to show a sufficient reason.

¶4 In the circuit court, Tolliver brought a motion to reconsider application of the procedural bar. Tolliver claimed that his postconviction attorney was ineffective by abandoning the appeal without alerting him to the

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

issue of his trial lawyer's ineffectiveness and this constituted a "sufficient reason" for his delayed litigation pursuant to *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 556 N.W.2d 136 (Ct. App. 1996). Under *Rothering*, the ineffective assistance of defendant's postconviction lawyer can be a sufficient reason for permitting an additional motion pursuant to WIS. STAT. § 974.06. *Rothering*, 205 Wis. 2d at 682, 556 N.W.2d at 140. This holding, however, does not extend to an unlimited number of successive postconviction motions. While *Rothering* might have justified Tolliver's raising the instant issue in his second postconviction motion, it cannot be used to justify yet a third collateral attack. "We need finality in our litigation Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of [§ 974.06]." *Escalona-Naranjo*, 185 Wis. 2d at 185, 517 N.W.2d at 163–164.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

